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IN THE

SUPREME COURT OF THE UNITED STATES

No. 615

MERRITT M. MEREDITH, *Petitioner and Appellant Below,*

vs.

JOHN DEERE PLOW CO. OF MOLINE, ILLINOIS,
Respondent and Appellee Below.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

MERRITT M. MEREDITH,
301 West Sixth Street,
Atlantic, Iowa,
Petitioner.

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City 6, Mo., HArrison 1-8080

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

OPINIONS BELOW.

On April 30, 1958, the United States District Court for the Southern District of Iowa, Western Division, ordered petitioner to abstain from any further litigation, either in a state or federal court—any further litigation which either directly or indirectly would be based on the allegation that respondent is failing to perform certain acts (R. 32; R. 36).

On November 20, 1958, the United States Court of Appeals for the Eighth Circuit affirmed the aforesaid order; and said decree was entered that same day. (A

certified copy of said decree and opinion is included herewith.)

On December 5, 1958, a thirty day Stay of Mandate from December 5, 1958, was granted by the aforesaid Court of Appeals plus an extension of the same until final disposition of this case by the Supreme Court, if within thirty days from December 5, 1958, the Clerk of the Supreme Court certified to the Clerk of said Court of Appeals that a petition for a writ of certiorari with record had been filed in the Supreme Court (Certified copy herewith included).

JURISDICTION.

Jurisdiction to review this case upon a Writ of Certiorari is believed conferred upon this Court by 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED FOR REVIEW.

Questions presented for review are:

(a) Can a court require cessation of litigation concerning a cause of action that never has been brought to trial?

(b) Can a federal district court prohibit an individual from starting an action in a state court—an action which the state court, at the time, has the authority to adjudicate?

CONSTITUTIONAL STATUTE AND PROVISIONS INVOLVED.

The rule of federal court procedure No. 41(b), 28 USCA. is involved in this case. It is here quoted verbatim: from "Federal Code Annotated" by West Publishing Co. "Involuntary Dismissal: Effect Thereof."

For failure of the plaintiff to prosecute or to comply with the rules of any order of court, a defendant may move for Dismissal of an action or of any claim against him. After the plaintiff has completed the presentation of his evidence, the defendant without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. In an action tried by the Court without a jury the Court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the Court renders judgment on the merits against the plaintiff, the Court shall make findings as provided in Rule 52(a). Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits".

The following Constitutional provisions are involved in this case:

10th Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people".

Article I, Section 1: "All legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives."

5th Amendment: "* * * nor [shall any person] be deprived of * * * liberty or property without due process of law."

7th Amendment: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved * * *"

Provisions of the Constitution, here quoted, are printed in Volume I of the 1946 edition of the Code of Iowa. Page lxiii.

STATEMENT OF THE CASE.

Petitioner harbors two distinct, but related, grievances or causes of action. These are: First: Respondent is injuring him wrongfully by failing to perform certain promised acts (R. 31, R. 44, R. 46, R. 42). Second: Respondent is defaulting on a promise to insure him against all loss occasioned by respondent's failure to perform the aforesaid acts as promised (R. 34).

No Court trial ever has been held concerning either grievance (R. 30).

For some time, petitioner has possessed evidence that respondent made him these two promises, and by doing so, extracted money and services from him (R. 44, R. 46, R. 8, R. 9). Recently, petitioner has discovered additional evidence, the same being evidence that respondent never had intended to honor these promises but, instead, made them to him deceitfully, for the purpose of swindling him (R. 33, R. 35).

Petitioner has been thinking of becoming a citizen of the same state as respondent; and then starting an action in a court of that state—an action wherein he will charge that respondent is despoiling him by fraud, when it fails to perform the aforesaid acts; and will charge that respondent is injuring him, by breach of contract, when it fails to honor its promise to insure (Decree, p. 3, Par. 3).

Petitioner never yet has made either of these charges in any court (R. 32).

The said federal district court, in its said order, expressly prohibits petitioner from starting the aforesaid contemplated action in any court, either state or federal (R. 36, R. 32).

Reason: It is a feature of federal court procedure that dismissal of a complaint, because it is devoid of legal merit, constitutes an adjudication that the cause of action, also, is devoid of legal merit. Said feature is due to Rule 41(b), Sec. 28, U.S.C.A. (R. 6, Decree p. 3).

The record reveals that petitioner previously has filed petitions or complaints regarding one of his aforesaid grievances or causes of action. The record further reveals that said petitions or complaints have been dismissed by federal courts because found to be devoid of legal merit. Therefore, said cause of action and any related cause of action, has been adjudicated, by federal court procedure, and found to be devoid of legal merit, also. (Decree p. 3 Par. 2, R. 36, R. 32) (R. 6 Par. 4).

Petitioner believes that when the federal district court ordered petitioner to cease further litigation, it thereby violated the 10th Amendment, the 7th Amendment and the 5th Amendment of the Constitution.

He believes that when said court prohibited him from starting the aforesaid contemplated action in any state court, that said federal court thereby violated the 10th Amendment, Article I, Section 1, and the 5th Amendment of the Constitution.

Said federal district court had jurisdiction of this controversy because, at present, the parties are citizens of different states, and more than $3,000.00 is involved.

In 18[illegible] the Supreme Court made a finding of fact. It found the following to be a fact: An adjudication that a complaint is bad, is not an adjudication that the cause of action is bad, also.

Having held the aforesaid proposition to be a fact, the Supreme Court concluded that *at no time, not ever* could the circumstance that previously a plaintiff had filed a bad complaint concerning his cause of action—that *never* could said circumstance be employed as a reason for denying him the opportunity of filing a good complaint concerning it. The Supreme Court said: "* * * a judgment that a declaration is bad in substance * * * can never be pleaded as a bar to a good declaration for the same cause of action. The judgment is, in no just sense, a judgment upon the merits." *Gilman* v. *Rives*, 10 Peters 298, 301. Story, J.

In this case the Eighth Circuit Court of Appeals holds that Rule 41(b), 28 U.S.C.A., by fiat, changes a non-fact into a fact. That rule, so said Court holds, makes it a fact that, when a complaint is bad, the cause of action is bad, also. Wherefore, said Court apparently concludes, the holding made by the Supreme Court in *Gilman* v. *Rives* (*supra*) no longer is applicable (Decree p. 3, Par. 2).

Question: Is said Court's interpretation of said rule correct?

Question: Does the Constitution delegate to the federal government the general and unrestricted power to create facts by fiat, or is that power delegated to the federal government to be used solely and only to ordain the value of money, and to fix the standard of weights and measures?

Question: Is a state court obligated to accord full faith and credit to a fact which owes its existence solely to a rule of federal court procedure?

At the time the Seventh Amendment to the Constitution was adopted, a plaintiff's right to have his cause of action tried by a jury was not affected adversely by the fact that previously he had filed a bad complaint concerning it.

Question: What effect, if any, does said fiat have on the Seventh Amendment?

Question: Does the Constitution delegate to the federal government the power to prevent an individual from bringing an action in a court of his state against another citizen of his state?

Question: If the Constitution does, would the exercise of said power be a legislative or a judicial act?

More than once, the Supreme Court has endorsed the statement that the phrase "due process of law", as same is employed in the Constitution implies a conformity with natural and inherent principles of justice.

Holden v. *Hardy*, 169 U.S. 366, 389. *Dom, Murray, and Lessees* v. *Hoboken Land and Improvement*, 18 Howard 272, 276. *Davidson* v. *New Orleans*, 96 U.S. 97.

Question: Does the aforesaid order, according to the facts of record, meet that minimum requirement?

CONCLUSION.

Wherefore, your petitioner prays that a Writ of Certiorari issue under Seal of this Court, directed to the Court of Appeals for the Eighth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Court of Appeals had in the case on its docket No. 16,036 *Merritt M. Meredith, appellant, v. John Deere Plow Co. of Moline, Ill., appellee*, to the end that this cause may be reviewed and determined by this Court as provided by the Statutes of the United States: and that the judgment herein of said Court of Appeals for the Eighth Circuit be reversed by the Court, and for such further relief as to this Court may seem proper.

Dated at Atlantic, Iowa, this 9th day of December, A. D. 1958.

MERRITT M. MEREDITH,
Petitioner.

MERRITT M. MEREDITH,
301 West Sixth Street,
Atlantic, Iowa.

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 16,036

Merritt M. Meredith, Appellant, vs. John Deere Plow Company of Moline, Illinois, Appellee.	Appeal from the United States District Court for the Southern District of Iowa.

[November 20, 1958.]

Merritt M. Meredith pro se.

Raymond A. Smith (Abel V. Shotwell with him on the brief) for Appellee.

Before JOHNSEN, VAN OOSTERHOUT and MATTHES, Circuit Judges.

JOHNSEN, Circuit Judge.

Appellee brought suit in the District Court for an injunction, to prevent appellant from continuing, commencing or prosecuting any proceeding against it, in state or federal court, attempting to relitigate the same cause of action, or any right, question or fact relating to the subject matter thereof, which had been involved in the decisions of the District Court and the affirmances made thereof by this Court, in *Meredith* v. *John Deere Plow Company of Moline, Illinois*, 8 Cir., 185 F.2d 481; *Meredith* v. *John Deere Plow Company of Moline, Illinois*, 8 Cir., 206 F.2d 196, and *Meredith* v. *John Deere Plow Company of Moline, Illinois*, 8 Cir., 244 F.2d 9.

Appellant is a farm-implement dealer in Iowa, who has also been admitted to the bar of this State. For a period of eight years, he has been subjecting appellee to the annoyance, burden and expense of a continuing series of law suits, instituted by him pro se, all of which have been predicated on the theory and claim that appellee has, since 1945 been wrongfully depriving him of the right to handle appellee's line of farm implements and machinery.

In the first suit referred to above, 185 F.2d 481, appellant sought to recover damages in breach for appellee's termination of his alleged oral contract of dealership or agency. The District Court held, 89 F.Supp. 787, that the relationship asserted by him was on its face one that under Iowa law was terminable at will and hence was without any enforceability. We affirmed.

In his next suit, 206 F.2d 196, appellant sought to use the relationship as a basis for an accounting as to the sales of appellee's implements and machinery occurring in the territory subsequent to the termination of his agency. We affirmed the dismissal made of this case, repeating our previous holding that "the agreement upon which the plaintiff relied was not enforceable against the defendant, being terminable at will".

In his third suit, 244 F.2d 9, appellant sought specific performance of the agency relationship, ignoring his initial recognition of a termination having occurred, and refusing also to accord any legal effect to the holding in the two earlier cases that the alleged agreement lacked enforceability.

Throughout all this litigation, appellant has taken the position that he has the right, and that he intends, to continue to institute suits against appellant to try to obtain a redress of the wrong which he evidently feels has been

done him. He appears to be possessed of the notion that the dismissal of one suit on or involving the contract cannot operate to bar another, without a formal trial upon the facts which he claims existed. We tolerantly pointed out to him in our third opinion, 244 F.2d at pages 10-11, that under Rule 41 (b) of the Federal Rules of Civil Procedure, 28 U.S.C.A., the orders of dismissal made against him operated legally as an adjudication upon the merits of his claim. Lacking enforceability, the agency or dealership agreement necessarily was without basis to support an action, whether in damages, accounting, or specific performance or any other theory of breach against appellee's termination.

In his answer in the present suit, as well as in his brief here, appellant admits that, until and except for the institution of this injunction suit, he was planning to bring another action against appellee—this time on the theory that appellee had promised never to cancel his agency or dealership; had made that promise without intention to keep it; and so was guilty of a fraud against him. He repeats the statement which he has made in his previous suits that he was induced to do things in reliance upon the non-cancellability of the agency agreement and relationship, which he was not obligated to do, and which should preclude appellant from engaging in termination, either as a matter of lack of right or as a matter of estoppel.

This aspect, which, as noted, has been injected into all of his cases, was expressly dealt with in the trial court's opinion in the first case, *Meredith* v. *John Deere Plow Co. of Moline*, D.C., S.D. Ia., 89 F.Supp. 787, 793-795, where it was held that the fact that appellant might trustingly have made changes or expenditures to promote the sales of appellee's products and the business of the agency, when he had no legal obligation to do so, or that he had agreed not

to engage in handling a competitive line of products during the period of his agency, was not sufficient under Iowa law, in the circumstances involved, as against the nature of the agreement generally and its lack of expressed and pervading mutuality otherwise, to transform the agency relationship into a life-time obligation on the part of appellee, while leaving it as one terminable wholly at will in appellant's favor

In so holding, the court took into account, among other decisions, *Lewis v. Minnesota Mut. Life Ins. Co.*, 220 Ia. 1249, 37 N.W.2d 316, where the Iowa Supreme Court had incidentally noted that the situation there involved (as here) was not one of personal employment but of agency relationship, and had declared: "It has been uniformly held that where one party to a contract is not bound to perform it and cannot be held liable for failure of performance there is a lack of mutuality and it is unenforcible". 37 N.W.2d at page 324.

The Iowa Supreme Court further indicated in that case that, even where some other element of consideration might be involved in such a relationship, this would not ordinarily be regarded as having been intended to be permeative of the duration of the agency, so as to give rise to a right in perpetuity against one of the parties, while leaving the other without obligation or with power of termination at will, unless the language of the agreement was itself so unequivocal as not reasonably to permit of any other construction. *Id.*, p. 321. See also *Hess v. Iowa Light, Heat & Power Co.*, 207 Ia. 820, 221 N.W. 194, 196

Here, the original agreement, as observed, was without any element of legal consideration, except such as would inhere in the existence of a mutuality of obligation to perform and of lack of right to terminate—which was

not present in the situation. The promise which appellant says appellee made not to cancel the agency relationship, and which it is alleged prompted the making of changes and expenditures for business policy and promotion purposes, as well as a cessation of handling competitive goods, occurred subsequently. And concededly there was involved in this no surrender by appellant of the right on his part to terminate the agency relationship at any time. In this situation, the relationship would still be subject to the rules which have been set out above, except as the law might equitably recognize some exception thereto on the basis of promissory estoppel.

There exists however no such sweeping and absolute principle as that "action in reliance is sufficient support for a promise". 1 Williston on Contracts, Rev. Ed., § 140. An obligation cannot be postulated on promissory estoppel, except where "injustice can be avoided only by the enforcement of the promise". Restatement, Contracts, § 90. Such injustice must be so substantial, in relation to and in terms of the particular situation involved, as to constitute serious prejudice (not mere legal detriment as in regular contract formation), or to amount in its effect to constructive fraud or unjust enrichment within traditional equitable concept. *Miller* v. *Laudor*, 245 Ia. 1144, 66 N.W.2d 267, 273.

The prompting of some changes in business policies and of promotional expenditures, as well as of a cessation of handling competitive goods, are not ordinarily such abnormal incidents in indefinite agency relationship, nor of such general commercial prejudice, as abstractly to give rise to an obligation by promissory estoppel of perpetual dealership representation. And here, on the allegations contained in appellee's various complaints, the situation clearly was without any such substantiality of injustice as to be

capable of being regarded as an inequity of fraud entitling appellant to be held to have a life-time obligation against appellee.

Indeed, what appellant claims he did was done 20 years before appellee's termination of the relationship; and the detriment which he alleges that he suffered from it was simply that it "caused (him) trouble and inconvenience" and that he "was under no prior obligation" in respect to it. His theory is, as we have noted and indicated the untenableness of, that anything inducedly done in reliance upon a promise, although it has not been made as the basis of an offer for acceptance in mutual contract relationship, will nevertheless give rise to an estoppel as a species of consideration for legally recognizing an obligation coextensive with the terms of the promise.

We have, however, been engaging here in unnecessary legal discussion, so far as disposition of this appeal is concerned, in an attempt once more to bring home to appellant, in his apparent legal delusion, that he has never had, and can never have, on any possible legal theory, under the facts existing in the situation, a cause of action for the termination made of his agency or dealership, and why it is now necessary, in his threats to continue devising theories on which to sue and harass appellee further, to issue an injunction against him.

While we have thus sympathetically tried to demonstrate to appellant that his cases and contentions have had the full and conscientious consideration of the courts, we should add that the judicial action which the trial court here took, and which is now before us for review, was in any event commanded legally by the adjudications made and inhering in our previous decisions, without regard to the discussion which has been engaged in herewith.

As to appellee's right to the injunction issued, the subjecting of another to repeated, baseless and vexatious suits at law on some particular subject matter is, without reference to other considerations, a sufficient ground for the issuance of an injunction against the perpetrator. *First State Bank v. Chicago, R. I. & P. R. Co.*, 8 Cir., 63 F.2d 585, 590; *Lee* v. *Bickel*, 292 U.S. 415, 421, 54 S.Ct. 727, 78 L.Ed. 1337. See also *Martin* v. *Beaver*, 238 Ia. 1143, 29 N.W.2d 555, 558.

Appellant's other contentions do not require discussion, for they are on their face without legal merit. As an illustration—among the things urged in appellant's brief is that it is unconstitutional for a federal court to prohibit the institution of a suit in state court, because "The Constitution does not grant to the federal government the power to prevent a state court from performing functions which it is authorized to perform". The obvious answer, of course, is that the injunction issued does not reach at action on the part of a state court but at action on the part of appellant.

Affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.